



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/172048

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 15, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Oneida Tribe Social Services in regard to FoodShare benefits (FS), a hearing was held on March 22, 2016, at Appleton, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both notices of tax intercept issued to collect overissuances of FoodShare benefits as well as the underlying overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Oneida Tribe Social Services  
2640 West Point Rd.  
PO Box 365  
Oneida, WI 54155

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner filed this appeal to contest a July 30, 2014 Notice of FoodShare Overissuance and a December 12, 2014 tax intercept notice.
3. Petitioner was sent a Notification of FoodShare Overissuance dated July 30, 2014. The notice informed Petitioner that his FoodShare household had been overissued FoodShare benefits in

the amount of \$980.00 for the period of May 1, 2014 through June 30, 2014 (claim # [REDACTED]). This notice was sent to Petitioner at the above address.

4. Petitioner was sent a tax intercept notice dated December 12, 2014 that informed Petitioner that his taxes were subject to intercept to repay a public assistance debt and the claim referenced at Finding # 3 was listed. The tax intercept was also sent to the address noted above. The balance of the claim was \$980.00 as of the date of the notice.
5. The overpayment notice involved here and well as the tax intercept do contain appeal instructions.
6. This appeal was filed on February 15, 2016.

### **DISCUSSION**

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. *§49.85(3)(a)2, Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g)*.

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayments as well as the tax intercept. The agency did send the proper notices to Petitioner's correct address as required by §49.85, Stats. This appeal was filed more than a year and a half after the Notice of Overpayment and more than a year after the tax intercept notice. I cannot find Petitioner's appeal to be timely as to the overpayment or tax intercept. There is no law allowing for expansion of these time limits.

### **CONCLUSIONS OF LAW**

1. That Petitioner's February 15, 2016 appeal is untimely with respect to the July 30, 2014 notice of FoodShare overissuance.
2. That Petitioner's February 15, 2016 appeal is untimely with respect to the December 12, 2014 tax intercept notice.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

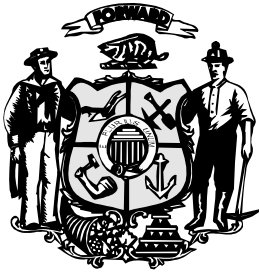
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of April, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 13, 2016.

Oneida Tribe Social Services  
Public Assistance Collection Unit